

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION Nos 1400 to 1403 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE D.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

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LEGAL HEIRS OF REPR.DEVABHAI TAPUBHAI

Versus

STATE OF GUJARAT

Appearance:

1. Civil Revision Application No. 1400 of 2001
MR YOGESH S LAKHANI for Petitioner No. 1-1/1
MR MA BUKHARI AGP for Respondent No. 1
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CORAM : MR.JUSTICE D.K.TRIVEDI

Date of decision: 03/05/2002

ORAL JUDGEMENT

Rule. Mr. Bhukhari, learned advocate for the respondent State of Gujarat waives service of Rule. Rule is fixed forthwith. Heard Mr. Lakhani, learned advocate for the petitioner and Mr. Bhukhari, learned AGP for the respondent State. With the consent of learned advocates, I dispose of all these revision applications by common judgement.

2. The petitioners had challenged the order passed by the learned Extra Assistant Judge, Rajkot dated 24th September, 2001 on an applications filed by the petitioners - applicants for withdrawal of the amount of compensation under the Land Acquisition Act. As found from the application, the purshis was filed by an advocate of the applicant dated 21st July, 2001 by highlighting that original applicant Deva Tapubhai had expired on 28.1.1987 and the death certificate was also annexed with the application issued by Talati-cum-Mantri dated 20th April, 2001 and as per the award passed under the Land Acquisition Act while deciding the application under Section 18 of the Land Acquisition Act, the respondent State has deposited a cheque of compensation before the Court and it is the case of the applicant that the heirs of the applicant are entitled for withdrawal of the said compensation and requested the court that cheque be issued in the name of heirs of deceased Deva Tapubhai.

3. It is further found from the details submitted by Mr. Lakhani that the award of the District court was challenged by the State Government by preferring appeal before the Hon'ble Gujarat High court and similar type of applications were submitted by the heirs of the respective applicants in land Reference Case Nos. 193/87, 194/87 and 196 of 1987. The original claimant of land Reference case No. 198/87 had expired on 8.1.1987, while the original claimant in Land Reference Case No. 193/87 had expired on 13.7.1987. The original claimant in Land Reference Case No. 194/87 had expired on 8.10.1997 and original claimant in Land Reference Case No. 196 of 1987 had expired on 10.1.1991. As observed earlier that against the Award passed by the District Court, respective claimants have preferred First Appeal No. 4492 of 1995 to 4499 of 1995. As found from the said judgement, the Hon'ble Court (Coram : Y.B. Bhatt, J.) has disposed all the appeals finally on 1st August, 1996 and all the appeal filed by the State Government were dismissed by common judgment. It is noted that neither the Appellant State nor the respective claimants had taken any steps to inform the Court that except claimants of Land Reference No. 194/87, the original claimants of in each matters were expired.

4. It is submitted that the petitioners applicants have moved an applications before the District Court with a prayer that the amount of compensation deposited by the State be permitted to withdraw to the heirs of respective deceased and the applicants have also produced certificates issued by the Panchayat Authority to show

that original claimants had expired. The learned Extra Assistant Judge, Rajkot had on 24th September, 2001 has dismissed each applications preferred by each applicant on the ground that the applicants have not come within the limitation and further observed that the applicants have not made any efforts to join them as party in each proceedings. The learned Judge has also observed that the applicants have also not produced any succession certificate to show that they are the only heirs of deceased. The petitioners - applicants have placed reliance upon the decision reported in 1967 G.L.R. p.311 in case of ALIHUSEIN ABBASBHAI AND OTHERS VS. THE COLLECTOR, PANCHMAHALS and (ii) decision reported in A.I.R. 1972 Patna-37 in case of LAKHAN MAHTO VS. STATE OF BIHAR.

In the decision reported in 1967 G.L.R. p.311 in case of ALIHUSEIN ABBASBHAI AND OTHERS VS. THE COLLECTOR, PANCHMAHALS, it is observed as under :-

"It is evident that a reference under Section 18 of the Land Acquisition Act is neither a suit nor a deemed suit and Article 176 of the Limitation Act has, therefore, no application to it. If that Article does not apply, there is no other Article which can possibly be invoked on behalf of the Collector and it must be held that no time is limited by law for making an application by heirs of a deceased applicant for bringing themselves on record in the reference."

In the decision reported in A.I.R. 1972 Patna-37 in case of LAKHAN MAHTO VS. STATE OF BIHAR, the Hon'ble Court has observed in para 3 is as under :-

Para 3 :- Section 214 (1) of the Act runs as follows :-

xxx xxx xxx
xxx xxx xxx

"It is not disputed by Mr. Katriar, who appeared for the State of Bihar, that clause (a) of this Section does not apply to this case inasmuch as the award which amounts to a decree has already been passed in this case and there is no question of the court passing any further decree. He has, however, contended that clause (b) of the Section

applied to this case, because, according to him, the application for payment of the money should be treated as an application for execution. On deposit of the compensation money by the State of Bihar, the award (Decree) stood satisfied, and there was no question of executing it. The application for withdrawal of the money already in deposit cannot be treated as an application for execution of the Award and there is no substance in this contention of Mr. Katriar."

5. Accordingly, on examining the order under challenge, the learned trial Judge has while considering the purshis of the heirs of respective claimants through advocate, had rejected the applications. As observed earlier, when the Land Acquisition Proceedings were initiated by acquiring lands of the claimants, the Land Acquisition Officer has declared his award and against which, the original claimants have moved the District Court for Reference under Section 18 of the Land Acquisition Act. As found from the judgment of the Reference Court namely 4th Extra Assistant Judge, Rajkot, he has vide common judgement disposed of all the land references namely land reference case Nos. 193/87 to 200 of 1987 and had allowed the References partly. Against which, the Deputy Collector and Land Acquisition Officer has preferred appeals before the Hon'ble Gujarat High Court and the High Court has per common judgement and order dated 1.8.1996 finally confirmed the order passed by the learned Assistant Judge dated 31.8.1994 and appeals preferred by State were dismissed. As found from the details furnished by Mr. Lakhani that in land Reference Case No. 198 of 1987, the reference was moved by the claimant Shri Deva Tapubhai and reference was received by the District Court on 3rd July, 1987, when the original claimant Deva Tapubhai had expired on 8.1.1987 i.e. before receiving the reference by the Reference Court. Though the appeals were filed by the State challenging the order passed by the Reference Court, no attempt is made by learned AGP nor the respondents to take any steps to bring the heirs on record.

6. In light of the decision which has been cited before me and which has been discusses earlier and further it is not in dispute that the land acquisition proceedings, the land of the respondent plaintiffs were acquired by the State authority and the land acquisition officer has while considering the provisions of the Land Acquisition Act has fixed the market value of the

acquired land and he has declared his award in favour of the plaintiffs and further, at the instance of the plaintiffs. Reference under Section 18 was moved before the District Court and the Reference Court has on examining the claim of the claimants has granted additional compensation in favour of the claimants and the possession of the land were taken from the tenants and the plaintiffs are entitled for the compensation of their lands.

7. As found that the judgement and decree of the Reference Court, which was challenged by way of preferring appeal by the State Authority and the High Court has while deciding the First Appeals Nos. 4492/95 to 4499/95 had dismissed the appeals and confirmed the order passed by the Reference Court and the amount awarded in favour of the claimants are deposited and lying with the Reference Court.

8. The petitioners - heirs of the claimants had moved the Court and it is their case that they are heirs of the original claimants and requested that the amount deposited by the State Authority be permitted to be withdrawn by issuing cheques in the names of the heirs of the claimants and the learned trial Judge has rejected the said application. Accordingly, while disposing of these revision applications and by setting aside the order passed by the learned trial Judge, it is necessary for this court to give certain directions to the heirs to file appropriate applications for bringing heirs on record by highlighting that they are the legal heirs, who had interest in the land/compensation, supported with an affidavit regarding the death certificate of the respective deceased claimants. On filing such application, the learned trial Judge shall decide the same in accordance with law, treating the said application within time. With this observation, all these revision applications are disposed of in above terms. Rule is discharged. However, there shall be no order as to costs. Direct service permitted.

(D.K.Trivedi, J.)

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